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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,093	02/04/2002	Anna-Karin Olsson	12389-003001	4311
26191	7590	05/05/2006	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			YU, MISOOK	
			ART UNIT	PAPER NUMBER
			1642	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/067,093

Applicant(s)

OLSSON ET AL.

Examiner

MISOOK YU, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 45,46,51-53,56-67 and 71-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45, 51-53, 56-59 is/are allowed.
- 6) ☒ Claim(s) 46,60-67 and 71-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/25/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Claims 45, 46, 51-53, 56-67, and 71-84 are pending. It is noted that claims 77-84 under 35 U.S.C. § 135(b)(2) are presented. Claims 77-84 under 35 U.S.C. § 135(b)(2) are subject to be determined for patentability. Claims 45, 46, 51-53, and 56-67, 71-84 are pending and under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This Office action contains new grounds of rejection.

***Claim Rejections - 35 USC § 102***

Claims 46 and 62 remain rejected and new claims 77-78, 82, and 84 are newly rejected under 35 U.S.C. 102(b) as being b by anticipated by Saez et al., (Biochemistry, Feb 28, 1995, Vol. 34, issue 8, pages 2496-503) as evidenced by Zamorano et al., of record.

Claims 46 and 62 are drawn to a substantially pure histidine-rich glycoprotein polypeptide coupled to a toxin, wherein said toxin is defined by claim 62 as "an anti-neoplastic agent", and new claims 77-79, 82, and 84 are drawn to a substantially pure histidine-rich glycoprotein peptide a diagnostically useful composition comprising [His/Pro]- [His/Pro]-Pro-His-Gly, with therapeutically active moiety and pharmaceutical carrier (claim 82).

Applicant argues that Zamorano does not qualify as a prior art.

This argument has been fully considered but found unpersuasive, because Zamorano et al., is not cited as a prior art anticipating the claims. Rather, Zamorano, et al., is cited as an evidentiary supporting document to support to demonstrate that iodine-124 is inherently a toxin, or anti-neoplastic agent.

As for new claims, the claimed invention reads on the histidine-rich glycoprotein of the prior art because the claims are construed using the open transitional phrase "comprising". See the new rejection under 35 USC § 112, second paragraph below. As for "diagnostically useful" in claims 78 and 84, the specification at page 18, line, 13 disclosed radioisotope labeled histidine-rich glycoprotein is diagnostically useful. As for claim 82, the prior art of record at page 2498, teach the protein in PBS, which is considered as pharmaceutically acceptable carrier.

Any rejection not repeated here is withdrawn based on applicant's argument.

***Claim Rejections - 35 USC § 103, Withdrawn***

The rejection of claim 58 under 35 U.S.C. 103(a) as being unpatentable over Saez et al (cited above) in view of Nygren reference in IDS ALL is withdrawn in view of applicant's argument.

***Double Patenting***

Claims 46, 60-67, and 71-76 remain provisionally rejected under the judicially created doctrine of double patenting over claims 1, 3-14 of copending Application No. 10/951,059. This rejection is maintained because applicant has not filed Terminal Disclaimer.

***The Following Are New Grounds of Rejection***

***Claim Rejections - 35 USC § 112***

Claims 77-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 77, and 78 are confusing as to which the limitation “that is 6, 7, 8, or 9 amino acids” or “comprises” controls the scope of the claims. The dependent claims are also rejected because the two conflicting limitations are included in the dependent claims.

For the purpose of this Office action, the office interprets the limitation “comprises” controls of the scope of the claims. However, this treatment does not relieve applicant the burden of responding to this rejection.

Claims 77-84 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is new matter rejection.

The specification as originally filed discloses “anti-angiogenic activity” is assayed using “CAM” or “endothelial migration assays”. However, the specification as originally filed does not disclose “inhibiting angiogenesis, endothelial cell proliferation or endothelial tube formation in an in vitro or in vivo bioassays” in the new claims 77 and

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78. The dependent claims that depend either on 77 or 78 are also rejected. Also, the limitation "peptide multimer" in claim 84, line 2 does not have support in the specification as originally filed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MISOOK YU, Ph.D. whose telephone number is 571-272-0839. The examiner can normally be reached on 8 A.M. to 5:30 P.M., every other Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Misook Y', with a stylized flourish at the end.

MISOOK YU, Ph.D.  
Primary Examiner  
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